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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/730,709

12/08/2003

Alessandro Luigi Spadini

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UNILEVER PATENT GROUP
800 SYLVAN AVENUE
AG West S. Wing
ENGLEWOOD CLIFFS, NJ 07632-3100

EXAMINER

ROBERTS, LEZAH

ART UNIT

PAPER NUMBER

1612

MAIL DATE

DELIVERY MODE

06/03/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/730,709	Applicant(s) SPADINI ET AL.	
	Examiner LEZAH W. ROBERTS	Art Unit 1612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 14, 15 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) 18 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14, 15 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>30 Jan 2008</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to the Request for Continued Examination filed January 30, 2008. All previous rejections have been withdrawn unless stated below.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Information Disclosure Statement

The references not considered by Examiner on the IDS submitted January 30, 2008 were previously June 19, 2007. All other references have been considered and initialed by Examiner.

Claims

Claim Rejections - 35 USC § 103 – Obviousness (New Rejections)

1) Claims 1-4, 7, 12, 14, 15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lentini et al. (US 6,177,092) in view of Guilbeaux (US 4,929,644).

Lentini et al. disclose self-foaming cleansing systems. The cleansing systems may be anhydrous. The anhydrous compositions are added to water to produce an effervescent effect composition. One component comprises a bicarbonate component (col. 3, lines 39-53). The second component includes an acid. The two reactive components can be dispensed from physically separate packages or from a unitary package with chambers. The components of either type of packages can be applied

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simultaneously or substantially simultaneously to the skin, where they commingle and react (col. 2, lines 17-30). The compositions may be formulated into solutions, colloidal dispersions, suspensions and gels (col. 6, lines 38-61).

The reference differs from the instant claims insofar as it does not disclose a specific example of a nonaqueous component in combination with an aqueous component and an organophilic particle.

Guilbeaux disclose thickened organic compositions having biocidal activity. The compositions use organophilic clays in combination to provide the thickening and biocidal activity. Organophilic clays are also used in cosmetic formulations. However, since typical cosmetic formulations generally last several months and are opened frequently while coming in contact with human hands and the environment, cosmetics are exposed to a variety of microorganisms. Absent some type of biocide, these preparations could eventually introduce undesirable microorganisms onto the human skin, eyes or mucous membranes. The concept behind employing the two defined organophilic clays involves combining one which will impart superior rheological properties to the organophilic clay with another which will impart excellent biocidal activity to the composition. Hence, the composition will not need other biocidal agents which can cause adverse (e.g., allergic) reactions especially if the composition is to be used topically. Advantageously, it has been discovered that the overall rheological properties of the organophilic clay will not be diminished and may even be enhanced by adding the organophilic clay with biocidal activity to the organic composition.

Furthermore, by providing a combination of first organophilic clays and/or a combination

of second organophilic clays, the thickening and biocidal activity can be tailored to the desired level for a given organic composition (col. 7, line 60 to col. 8, line 18).

The reference differs from the instant claims insofar as it does not disclose the compositions are two part compositions comprising a first component that reacts with a second component.

It would have been obvious to one of ordinary skill in the art to have used a combination of organophilic clays in the compositions of the primary reference motivated by the desire to incorporate a rheology modifier suitable for cosmetics that thickens the compositions as desired and acts as a biocidal agent and remove the need for other biocidal agents that may cause adverse reactions, as disclosed by the secondary reference.

In regards to claims 12 and 14, normally, changes in result effective variables are not patentable where the difference involved is one of degree, not of kind; experimentation to find workable conditions generally involves the application of no more than routine skill in the art. See MPEP 2144.05. It would have been obvious to one of ordinary skill in the art to use a particular particle size motivated by the desire to obtain a composition with optimal efficacy when the components are mixed and react with one another.

2) Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lentini et al. (US 6,177,092) in view of Guilbeaux (US 4,929,644) as applied to claims 1-4, 7, 12, 14, 15 and 18 in further view of Gentile et al. (US 6,161,729).

The primary and secondary references are discussed above. The references differ from the instant claims insofar as they do not disclose the type of valves or specific types of bottle used to store and deliver the compositions.

Gentile et al. disclose dual chamber dispenser having a duckbill valve. The duckbill valve is suitable as a metering valve and has closable valves giving the option of different flow rates for each disclosed component (col. 2, lines 46-54). The valves may also have an anti-suck back functionality, which restricts air from entering the tube after each extrusion stroke (col. 3, lines 30-35).

The reference differs from the instant claims insofar as it does not disclose the compositions that are stored in the dispensers are skin compositions comprising two reactive agents, and an organophilic particle.

It would have been obvious to one of ordinary skill in the art to have used the dispensers to store the compositions of the combined primary and secondary references motivated by the desire to keep the two components separate and to be able to deliver different amounts of each component to the targeted site when necessary or to control the delivery of each component when the components have different flow rates, as disclosed by the tertiary reference.

3) Claims 5-6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lentini et al. (US 6,177,092) in view of Guilbeaux (US 4,929,644) as applied to claims 1-4, 7, 12, 14, 15 and 18 in further view of Hall et al. (US 5,316,054).

The primary and secondary references are discussed above. The references differ from the instant claims insofar as it does not disclose the type of cap used on the dispensers.

Hall et al. disclose container caps that have markings for measuring compositions inside a container. The primary objective of the caps is to enable quick and easy dosing of a highly concentrated liquid that is diluted with water by a certain ratio (col. 3, lines 19-23). A fill line is provided for the user in order for the correct amount of water to be added to the concentrated liquid. The cap also comprises a reservoir for the concentrated liquid so the correct amount of liquid is used (see Abstract).

The reference differs from the instant claims insofar as it does not disclose the type of composition used.

It would have been obvious to one of ordinary skill in the art to have used the caps when dispensing or storing the compositions of the combined primary and secondary references motivated by the desire to deliver the desired amount of each component to the targeted site by being able to measure the amount of the two components when mixing, as disclosed by the tertiary reference.

4) Claims 1, 3, 4, 7, 9, 12, 14, 15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis (US 5,720,949) in view of Guilbeaux (US 4,929,644) and Pettengill (US 5,020,694).

Davis discloses foamable cosmetic mask products. The first component comprises sodium bicarbonate and the second component comprises an acid such as lactic acid (Example 1). Although both components may comprise water, one of the components may be anhydrous (col. 2, lines 4-7). The components are mixed before use. The compositions, preferably the effervescent agent, also comprise a non-liquid organic material of moderate melting point. This encompasses the limitation of the organophilic particle, particularly in view of the absence of a definition of what the term encompasses in the specification. The compositions also comprise thickening agents such as magnesium aluminum silicate and clays such as bentonite, montmorillonite and hectorite. When the two components are mixed foaming takes place. The components are applied to the face of the consumer sequentially (Abstract).

The reference differs from the instant claims insofar as it does not specifically disclose the type of container used and that the clays are organophilic.

Guilbeaux is discussed above. The reference differs from the instant claims insofar as it does not disclose the compositions are two part compositions comprising a first component that reacts with a second component.

Pettengill discloses multi-cavity dispensing containers. The containers are a rigid piston-type multi-cavity dispensing container for simultaneous coextrusion of two or more flowable materials in a predetermined proportion. The container has a unique outlet which is arranged to cause the outlet streams of material to flow towards each other. The outlet maintains the segregation of the different materials as they move

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simultaneously outward through the outlet (Abstract). The containers comprise a pump (col. 2, lines 58-60).

The reference differs from the instant claims insofar as it does not disclose the compositions that are stored in the dispensers are skin compositions comprising two reactive agents, and an organophilic particle.

It would have been obvious to one of ordinary skill in the art to have used a combination of organophilic clays to the compositions of the primary reference motivated by the desire to incorporate a rheology modifier suitable for cosmetics that thickens the compositions as desired and acts as a biocidal agent and remove the need for other biocidal agents that may cause adverse reactions, as disclosed by the Guilbeaux.

It would have been obvious to one of ordinary skill in the art to have used the dispensers to store the compositions of the combined references of Davis and Guilbeaux motivated by the desire to keep the two components separate and to be able to deliver each component to the targeted site simultaneously in a predetermined proportion, as disclosed by the Pettengill.

In regards to claims 12 and 14, normally, changes in result effective variables are not patentable where the difference involved is one of degree, not of kind; experimentation to find workable conditions generally involves the application of no more than routine skill in the art. See MPEP 2144.05. It would have been obvious to one of ordinary skill in the art to use a particular particle size motivated by the desire to

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obtain a composition with optimal efficacy when the components are mixed and react with one another.

Obvious-Type Double Patenting (Previous Rejection)

Claims 1-15 and 18 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-1, 13, and 16-17 of copending Application No. 10/730,218 in view of Lentini et al. (US 6,177,092).

The rejection is maintained.

Applicant's Arguments

Applicant argues if the provisional double patenting rejection is the only rejection remaining in the application, the examiner is respectfully requested to withdraw the rejection allowing the instant case to issue thereby converting the provisional double patenting rejection to a double patenting rejection for application no. 10/730,218. This argument is not persuasive.

Examiner's Response

The double patenting rejection is not the only remaining rejection and therefore the rejection stands.

Claims 1-12, 14, 15 and 18 are rejected.

Claims 19 and 20 are withdrawn.

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LEZAH W. ROBERTS whose telephone number is (571)272-1071. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick F. Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lezah W Roberts/
Examiner, Art Unit 1612

/Frederick Krass/
Supervisory Patent Examiner, Art Unit 1612